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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/879,314	06/12/2001	Mark A. Dovi	10005097-1	5150

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EXAMINER

WU, QING YUAN

ART UNIT	PAPER NUMBER
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2194

DATE MAILED: 06/05/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/879,314

Applicant(s)

DOVI, MARK A.

Examiner

Qing-Yuan Wu

Art Unit

2194

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 May 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3, 5-7, 13, 16, 18-22, 24-28 and 30-33 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3, 5-7, 13, 16, 18-22, 24-28 and 30-33 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.


WILLIAM THOMSON
SUPERVISORY PATENT EXAMINER

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

1. Claims 1-3, 5-7, 13, 16, 18-22, 24-28, and 30-33 are presented for examination.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1-3, 5-7, 13, 16, 18-22, 24-28, and 30-33 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

- a. The following term lacks antecedent basis:

- i. the data transfer- claims 1, 5 and 13.
- ii. the data transfer metrics- claims 1, 5 and 13.

- b. The following claim language is indefinite:

- i. As to claim 1, it is uncertain whether “the data transfer metrics” refers to the same “a first data transfer metric” in line 4 and “said first data transfer metric” in line 6. In addition, it is uncertain whether “the data transfer” in line 10 refers to “a first data transfer metric” or “first data transfer pathway” or “second data transfer pathway” or “data transfer circuitry” (i.e. if it does then “said first data transfer metric” should be use throughout all the claims to proper refer to the antecedent. For examining purposes, “the data transfer” will be treated as the transfer of data). Claims 5 and 13 are rejected for the same reason.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-3, 5-7, 13, 16, 18-22, 24-28, and 30-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Scott (hereafter Scott) (U.S. Patent 6,816,464).

6. Scott was cited in the last office action.

7. As to claim 1, Scott teaches the invention substantially as claimed including a method for transferring data between processing applications:

measuring a first data transfer metric for a first data transfer pathway between said first processing application and said second processing application; measuring said first data transfer metric for a second data transfer pathway between said first processing application and said second processing application [abstract, lines 1-4; col. 2, lines 10-15, 32-36, and 46-53; col. 4, lines 42-45; 406, 408, Fig. 4; Fig. 5];

monitoring the data transfer metrics using a control software program operating on the computer that is connected to data transfer circuitry [col. 2, lines 25-39] and software that control

the data transfer [col. 2, lines 46-53] and determines pathway capacity [col. 9, lines 13-50; Tables 1 and 2];

comparing the first data transfer metric for the first pathway to the first data transfer metric for the second pathway; and selecting one of said first and second data transfer pathways for subsequent data transfers based upon the result of said step of comparing, and upon at least one user-specified data transfer rule [abstract, lines 4-9; col. 2, lines 17-22, 36-39; col. 2, line 64-col. 3, line 3; col. 5, lines 3-5; col. 5, line 56-col. 6, line 22; col. 8, lines 40-49; 410, 412, Fig. 4];

using the data transfer metrics with at least one of the user-specified data transfer rules to control and heuristically identify an optimal data transfer pathway between the first and second processing applications [abstract; col. 2, lines 12-16, 40-53 and 61-67; col. 6, lines 17-19].

8. Scott does not specifically teach wherein said first and second processing applications and said first and second data transfer pathways are comprised by a single computer. However, Scott disclosed that his invention could be implement in alternative embodiments [col. 4, lines 62-65].

9. It would have been obvious to one of an ordinary skill in the art at the time the invention was made, to have recognized that the teaching of Scott could be implemented in a single computer or communication between various entities.

10. As to claim 2, Scott teaches the invention substantially as claimed including at least one of first and second data transfer pathways are comprised of at least one computer program [abstract, route checking and management program].

11. As to claim 3, Scott teaches the invention substantially as claimed including at least one of first and second data transfer pathways is a physical transmission media [102, 202, 302, Figs. 1-3].

12. As to claim 18, Scott teaches the invention substantially as claimed including wherein said first data transfer metric relates to error rates [col. 3, lines 12-15; col. 3, line 67-col. 4, line 3; col. 9, table 2].

13. As to claims 19-20, Scott does not specifically teach said first data transfer metric relates to processing overhead, and wherein said processing overhead results from at least one of encryption and compression. However, Scott disclosed quality score, packet loss, average delay, and average jitter [col. 3, lines 12-15; col. 3, line 67-col. 4, line 3; col. 9, table 2]. It would have been obvious to one of an ordinary skill in the art at the time the invention was made, to have recognized that the teaching of Scott takes into consideration processing overheads, which cause delays, into the selection of a pathway.

14. As to claim 21, Scott teaches the invention substantially as claimed including said at least one user-specified data transfer rule comprises at least one of selecting the least expensive pathway [col. 8, lines 10-22].

15. As per claim 22, Scott does not specifically teach selecting the least expensive pathway for very large data transfers and the fastest pathway for sensitive data transfers. However, Scott disclosed providing individual or group routing preferences and/or other route information so that the system can select the proper route for the individual or group [col. 2, lines 17-22]. It would have been obvious to one of an ordinary skill in the art at the time the invention was made, to have recognized that the teaching of Scott could include selecting what the user preferred, such as the limitations mentioned above.

16. As to claims 5-7 and 24-28, these are method for transferring data between processors claims that correspond to the method for transferring data between processing applications claims 1-3 and 18-22. Therefore, they are rejected for the same reason as claims 1-3 and 18-22 above.

17. As to claim 13, this claim is rejected for the same reason as claim 1 above. In addition, Scott teaches the invention substantially as claimed including a computer system that minimizes data transfer operations, comprising:

a plurality of data transfer pathways through which data is transferred [col. 2, lines 32-33];

at least first and second processors coupled to said data transfer pathways [102, 104, 106, 108, Fig. 1]; and

a data transfer manager coupled to the first and second processors and coupled to the data transfer pathways network [col. 2, lines 28-31; col. 5, lines 56-63; Fig. 3].

18. As to claim 16, Scott teaches the invention substantially as claimed including wherein said data transfer manager is a computer program [col. 7, lines 7-9].

19. As to claims 30-33, these are computer claims that correspond to method claims 19-22. Therefore, they are rejected for the same reason as method claims 19-22 above.

Response to Arguments

20. Applicant's arguments filed 5/8/06 have been fully considered but they are not persuasive.

21. In the remarks, Applicant argued in substance that:

- a. Scott does not disclose, teach, or suggest Applicant's monitoring the data transfer metrics using a control software program operating on the computer that is connected to data transfer circuitry and has software that controls the data transfer and determines pathway capacity and a data transfer manager that heuristically identifies an optimal data transfer pathway between the first and second processing application.
- b. Scott requires use of a gateway, it clearly teaches away from the Applicant's

claimed invention because non-use of a gateway. This teaching away of the Applicant's invention and the failure of the cited reference to disclose, suggest or provide motivation for the Applicant's claimed invention indicates a lack of a prima facie case of obviousness.

22. Examiner respectfully traversed Applicant's remarks:

a. As to point (a), applicant's argument is mooted in view of the new ground of rejection.

b. As to point (b), applicant fails to explain why the mappings of the examiner's rejection do to satisfy the claimed invention. Therefore, applicant's argument is not persuasive.

23. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however,

will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

24. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Qing-Yuan Wu whose telephone number is (571) 272-3776. The examiner can normally be reached on 8:30am-5:00pm.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, William Thomson can be reached on (571) 272-3718. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Qing-Yuan Wu

Patent Examiner

Art Unit 2194


WILLIAM THOMSON
SUPERVISORY PATENT EXAMINER